

**REMARKS**

Claims 1-69 are pending in the present application. No new matter is inserted into the application.

***Restriction Requirement***

In response to the Restriction and Election Requirement, Applicants elect Group I, claims 1-11, 20-21, 28-37, 43, 45, 47, 49, and 51-69, drawn to a method of producing a herbicide resistant plant comprising transforming a plant with a polynucleotide encoding a protoporphyrin XI binding subunit of a magnesium chelatase or a ferrochelatase, a plant produced therefrom, and methods of using said plant, with traverse.

Applicants respectfully submit that the Examiner has misclassified claims 14 and 15. These claims should be classified in Group II rather than Group III. These claims are directed to the method according to claim 5 or 6, wherein the protein "comprises the amino acid sequence of SEQ ID NO: 55," or "has the amino acid sequence of SEQ ID NO: 56." These sequences represent a peptide RASSL having an affinity for protoporphyrin IX (see page 80, lines 10-13 of the specification). Therefore, these proteins correspond to "a protein comprising a protoporphyrin IX binding peptide" as

classified in Group II. For these reasons, Applicants respectfully request that the Examiner reclassify claims 14 and 15 into Group II.

Applicants respectfully submit that the Examiner has not established that there is an undue burden in searching for all claims as required by MPEP § 803. The "undue burden" requirement created by the U.S. Patent and Trademark Office is recited in MPEP § 803:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on its merits, even though it includes claims to independent and distinct inventions.

The Examiner states, "the search required for one of the groups is not required for another..." On the other hand, the Examiner states that all of the claims are classified within the same class, (i.e., class 800). The groups only differ by subclassification, but even then, Groups II and III share the same subclassification (i.e., subclass 288). Applicants do not believe that an undue burden would be placed on the Examiner to rejoin the claims, especially when the claims share the same classification.

For these reasons, Applicants believe that an undue burden for searching does not exist, and respectfully request that the Examiner rejoin all claims of the present invention and examine them together in the present application. Alternatively, Applicants respectfully submit that the Examiner reclassify claims 14 and 15 into Group II.

Application No. 09/697,719

An early and favorable action on the merits of the present application is earnestly solicited.

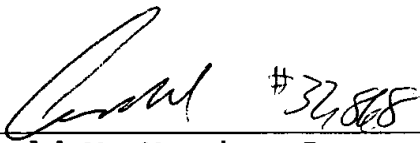
If the Examiner has any questions concerning this application, the Examiner is requested to contact Kristi L. Rupert, Ph.D. (Reg. No. 45,702) at (703) 205-8000.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By

 #32,868  
Gerald M. Murphy, Jr.,  
Reg. No. 28,977

GMM/<sup>KLR</sup>KLR

P.O. Box 747  
Falls Church, VA 22040-0747  
(703) 205-8000